IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HONOURABLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.17033 OF 2006
DATED 20-04-2007

BETWEEN

Shaik Gouse Mohiuddin.

.. Petitioners

And

The A.P.Wakf Board rep by its
Chief Executive Officer, Hyderabad and 2 others.

.. Respondents

THE HONOURABLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.17033 OF 2007

Oral Order:

The petitioner was appointed as a temporary Mutawali of Dargah Hazrat Syed Baji Shaheed Aulia (wakf), Pedakakani Village and Mandal , Guntur District in the year 1992 initially for a period of two years. That is being extended from time to time, latest being through proceedings dated 6.3.2006 issued by the 1st respondent. Respondents 2 and 3 herein were appointed as joint Mutawalis for the same wakf through proceeding dated 10.8.2006 by the 1st respondent. The petitioner challenged the same. He contends that even while his appointment as the sole Mutawali of the wakf is in force,

the 1st respondent appointed respondents 2 and 3 as joint Mutawalis, without any legal or factual basis.

Respondent No.1 on the one hand and respondents 2 and 3 on the other hand, filed different counter affidavits. According to them, the very appointment of the petitioner was on temporary basis and subject to the examination of claims by others for being appointed as joint Mutawalis. It is also stated that the procedure prescribed under law was followed before appointing respondents 2 and 3.

Heard Sri P.Veera Reddy, learned counsel for the petitioner and Sri Mohd.Wasim Ahmed, learned standing counsel for the 1st respondent and Sri K.Ramakanth Reddy, learned counsel for respondents 2 and 3.

Had the appointment of the petitioner as Mutawalli been on regular basis or in recognition of his hereditary rights, totally different things would have been ensued. Right from the inception, his appointment is on temporary basis. In the latest order of renewal of his appointment, it was made amply clear that his appointment is subject to the consideration of claims of as many as five others for being appointed as joint Mutawalies. In case, the petitioner had any objection for such an observation, he ought to have protested the same instantly. However, he did not raise any objection and derived the benefit under the order.

This court took the view that where a regular Mutawali is functioning for a Wakf, additional Mutawalis cannot be appointed as a matter of course and at any rate, the existing Mutawali must be put on notice, before any additional Mutawali is appointed. In the instant case, though no individual notice was issued to the petitioner before respondents 2 and 3 were appointed, he himself submitted a detailed

explanation in response to a notification issued by the 1st respondent inviting objections. There is a specific reference to the objections raised by the petitioner and several others, in the impugned order. Therefore, it cannot be said that any serious procedural irregularity has been taken place, while appointing respondents 2 and 3.

Learned counsel for the petitioner submits that the writ petitioner is entitled to be recognized as a regular Mutawali and that respondents 2 and 3 do not have any right to be appointed as joint Mutawalis. To express any opinion on this contention, it becomes necessary to record evidence and to examine the factual and legal aspects. The Wakf Act provides for a perfect and alternative remedy for resolution of such disputes. If the petitioner is so advised, he can institute proceedings before the A.P.Wakf Tribunal duly impleading the affected parties.

Therefore, the writ petition is disposed of leaving it open to the petitioner to workout his remedies by instituting proceedings before the Wakf Tribunal. The Tribunal shall endeavour to dispose of the proceedings, if initiated by the petitioner and this order shall not be treated as a final pronouncement upon the individual rights of the parties to the writ petition.

L.NARASIMHA REDDY,J

Dated 20.4.2007
msv